

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 08-13555-scc
4 - - - - - x
5 In the Matter of:
6
7 LEHMAN BROTHERS HOLDINGS INC.,
8
9 Debtor.
10 - - - - - x
11 Case No. 08-01420-scc
12 - - - - - x
13 In the Matter of:
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15 LEHMAN BROTHERS INC.,
16
17 Debtor.
18 - - - - - x
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1 United States Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
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5 December 7, 2017
6 9:33 AM
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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE
24

25 ECRO: JONATHAN

1 HEARING re 08-01420-scc Doc #14442 Notice of Presentment of
2 Order Pursuant to SIPA Section 78fff-2(c) Authorizing the
3 Allocation and Transfer of the Remaining Customer Reserve to
4 the General Estate, Closing of the Customer Estate, and
5 Related Relief

6
7 HEARING re 08-01420-scc Doc #14443 Trustees Motion for an
8 Order Authorizing the Abandonment of Certain Discovery
9 Databases

10
11 HEARING re 08-01420-scc Doc #14444 Twenty-Fourth Application
12 of Hughes Hubbard & Reed LLP for Allowance of Interim
13 Compensation for Services Rendered and Reimbursement of
14 Actual and Necessary Expenses

15
16 HEARING re 08-01420-scc Doc #14445 Joint Notice of
17 Presentment of Tenth Amended Order Pursuant to Section
18 78eee(b)(5) of SIPA, Sections 105,330 and 331 of the
19 Bankruptcy Code, Bankruptcy Rule 2016(a) and Local
20 Bankruptcy Rule 201 6-1 Establishing Procedures Governing
21 Interim Monthly Compensation of Trustee and Hughes Hubbard &
22 Reed LLP

23
24 HEARING re 08-13555-scc RMBS Claims Estimation Trial
25 Transcribed by: Sonya Ledanski Hyde

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1 ALSO PRESENT TELEPHONICALLY:

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3 PATRICK MOHAN

4 GRANT STEIN

5 THOMAS ALSTON

6 KYLE BURNS

7 CELINE BUEHL

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1 P R O C E E D I N G S

2 THE COURT: How are you?

3 MR. MARGOLIN: Well, thank you. Should I go to
4 the podium?

5 THE COURT: Well, we're in the middle of a trial.

6 MR. MARGOLIN: So does this work better?

7 THE COURT: Wherever you're most comfortable is
8 fine.

9 MR. MARGOLIN: I can go to the podium, if you --

10 THE COURT: Come to the podium. That's fine.
11 That's fine.

12 MR. MARGOLIN: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. MARGOLIN: For the record, Jeffrey Margolin,
15 Hughes, Hubbard & Reed, for Mr. Giddens, the SIPA Trustee.
16 Joining me this morning is Mr. Caputo from SIPC.

17 MR. CAPUTO: Good morning, Your Honor.

18 THE COURT: Hello, Mr. Caputo.

19 MR. CAPUTO: How are you?

20 MR. MARGOLIN: We have four uncontested matters on
21 the calendar this morning, Your Honor.

22 THE COURT: Yes.

23 MR. MARGOLIN: But even for Lehman customers,
24 creditors, SIPC, and our team, this is a day of an
25 extraordinary milestone in a case really of extraordinary

1 milestones, as we seek Your Honor's approval to the lar --
2 what is literally the largest customer estate in the history
3 of insolvency proceedings.

4 But that is a starting point, Your Honor. Before
5 I turn to the agenda, if Your Honor would like, I would like
6 to provide a brief update on developments --

7 THE COURT: Please.

8 MR. MARGOLIN: -- for the appellate claims
9 litigations --

10 THE COURT: Yes.

11 MR. MARGOLIN: -- since were last before the Court
12 in September.

13 THE COURT: Right.

14 MR. MARGOLIN: As we previously noted, Your Honor,
15 there are no pending claims before Your Honor at the
16 Bankruptcy Court level --

17 THE COURT: Right.

18 MR. MARGOLIN: -- customer or general creditor.
19 In each of these appeals, the Trustee is an appellee. So
20 there four matters that our team is currently working on in
21 representing the Trustee as appellee. One recently closed;
22 that was the employee bonus claim litigation involving Mr.
23 Hoffman. That, Your Honor's order has become final and not
24 appealable, both to Mr. Hoffman and to Mr. Judkins, and that
25 matter is closed.

1 Second, Your Honor --

2 THE COURT: Can I say, again, that I was right?

3 MR. MARGOLIN: You were right. Second, the
4 Trustee's counsel and Mr. Caputo presented oral argument in
5 the District Court on what we call the ACATS claimants --

6 THE COURT: Yes.

7 MR. MARGOLIN: -- appeal on October 20th.

8 THE COURT: Okay.

9 MR. MARGOLIN: And we are now waiting Judge
10 Pauley's decision on that matter.

11 THE COURT: Okay.

12 MR. MARGOLIN: Third, this past Monday, Your
13 Honor, the Trustee filed his appellate brief in the District
14 Court in the ESEP appellate litigation. The claimant's
15 reply brief is due, now due on January 12th. There's also
16 not been any word, Your Honor -- we had a letter writing
17 campaign regarding the relatedness.

18 THE COURT: Yes, there were three -- oh, I'm
19 sorry, I thought you were talking about RSU claimants that
20 were -- where the claims are spread out among three
21 different judges.

22 MR. MARGOLIN: That's ESEP, Your Honor.

23 THE COURT: Okay.

24 MR. MARGOLIN: The ESEP claims that, yes, there
25 were three District Court judges; one which was assigned

1 Your Honor's appeal of the order granting the Trustee's
2 motion for summary judgment. We filed our appellate brief
3 there this past Monday.

4 THE COURT: And that's before?

5 MR. MARGOLIN: That's before Judge Analisa Torres.

6 THE COURT: Okay.

7 MR. MARGOLIN: Then, Your Honor, we -- there was
8 an appeal of Your Honor's orders which reclassified these
9 claims from secured to unsecured.

10 THE COURT: Right.

11 MR. MARGOLIN: That's been fully briefed before
12 Judge Gardify since February 2016.

13 THE COURT: Okay.

14 MR. MARGOLIN: And then, Your Honor, there was
15 originally the ESEP claimants had moved to withdraw the
16 reference.

17 THE COURT: Right.

18 MR. MARGOLIN: That was assigned to Judge Ramos.

19 THE COURT: Ramos, right.

20 MR. MARGOLIN: And that matter, of course, Judge
21 Ramos denied the withdrawal of the reference.

22 THE COURT: Right.

23 MR. MARGOLIN: And we came back here for the
24 summary judgment arguments.

25 THE COURT: Right.

1 MR. MARGOLIN: So we've not heard from the
2 District Court regarding whether these appeals --

3 THE COURT: But there's nothing -- there's nothing
4 -- there's not an appeal of the denial of the motion to
5 withdraw.

6 MR. MARGOLIN: No, there's not.

7 THE COURT: Right?

8 MR. MARGOLIN: No, there's not.

9 THE COURT: So at least Judge Ramos is kind of out
10 of it.

11 MR. MARGOLIN: Judge -- yeah, yes.

12 THE COURT: He's not admitting, right?

13 MR. MARGOLIN: He would be like -- he would be, if
14 you were ranking things like the third.

15 THE COURT: Right.

16 MR. MARGOLIN: And he's really out because that
17 matter is considered closed.

18 THE COURT: Right. So the only live overlapping
19 facts are between the matters between Judge Torres and Judge
20 Gardify, right?

21 MR. MARGOLIN: Yes.

22 THE COURT: Okay.

23 MR. MARGOLIN: And we --

24 THE COURT: And that's it, just those.

25 MR. MARGOLIN: And we have one other, Your Honor,

1 which you mentioned, RSUs --

2 THE COURT: Right.

3 MR. MARGOLIN: -- equity awards. We have oral ar -
4 - the Second Circuit has scheduled oral argument on the
5 Trustee's appeal -- on the appeal of the Trustees'
6 determinations subordinating these claims for January 10th.

7 THE COURT: And that's the group that's
8 represented by?

9 MR. MARGOLIN: Mr. Schrager.

10 THE COURT: Mr. Schrager. And what date is that
11 at the Second Circuit?

12 MR. MARGOLIN: January 10.

13 THE COURT: And that's it.

14 MR. MARGOLIN: That's it in the claims population.
15 So, of course, Your Honor --

16 THE COURT: Is it -- is there a cost to keeping --
17 so after today, not to steal your thunder, but we're going
18 to close the customer estate.

19 MR. MARGOLIN: Yes.

20 THE COURT: Then you're going to have the general
21 creditor estate still open. Is there a cost to keeping the
22 general estate still open?

23 MR. MARGOLIN: Yes, Your Honor. I would say that
24 there are, besides working on these litigations.

25 THE COURT: Right.

1 MR. MARGOLIN: The Trustee, as well as working on
2 -- and we were planning to probably come before Your Honor
3 at some point in the first quarter about monetizing certain
4 residential assets.

5 THE COURT: Okay.

6 MR. MARGOLIN: And then there is a cost in
7 connection, mostly with data management and maintenance; as
8 well as just as the natural things, as Your Honor would
9 know, in keeping a bankruptcy estate opening --

10 THE COURT: Right.

11 MR. MARGOLIN: -- open regarding reporting,
12 regarding internal controls, regarding compliance.

13 THE COURT: But you have reserves?

14 MR. MARGOLIN: Yes, Your Honor.

15 THE COURT: You have reserves on account of these
16 claims in the event that there's a reversal on one or more
17 of them.

18 MR. MARGOLIN: That's correct. We are fully
19 reserved on these claims. In fact, on the ESEP claims,
20 because Mr. (indiscernible)'s clients checked the secured
21 box, we are fully -- those claims are reserved at 100
22 percent.

23 THE COURT: Dollar-for-dollar.

24 MR. MARGOLIN: Yeah, dollar-for-dollar. So we
25 continue, as Your Honor, these are all -- closing the --

1 moving the estate towards a final distribution and closing
2 the estate is dependent really on the Appellate Court's
3 schedules and how these claims do that. And the Trustee,
4 with Mr. Caputo, are trying to press these matters up
5 through the Appellate Courts as promptly as efficiently as
6 we can.

7 THE COURT: I'm sure you are. All right.

8 MR. MARGOLIN: So turning to the agenda, Your
9 Honor, if I may?

10 THE COURT: Yes.

11 MR. MARGOLIN: The first uncontested matter is the
12 presentment of the proposed order where, pursuant to SIPA
13 Section 78FFF-2C authorizing the allocation and transfer of
14 the remaining customer reserve to the general estate,
15 closing of the customer estate, and related relief.

16 This request is a particularly extraordinary step,
17 given the uncertainty surrounding customer distributions,
18 which occurred at the beginning of the case through up until
19 we did not -- we were not in a position to effectuate
20 customer distributions until the LBIE and LBHI settlements
21 and allocation motion of allocating funds between the
22 customer estate and general estate became final, and we were
23 so able to make 100 percent distributions to customers
24 beginning in June of 2013. Until those settlements were
25 approved given the vast customer claims filed by LBIE and

1 LBHI based on reserves, it was really uncertain whether
2 there would be 100 percent distributions to public
3 customers.

4 So, Your Honor, through this order, the Trustee
5 seeks the Court's authority to allocate and transfer
6 approximately \$69 million in remaining excess funds and any
7 additional interest accrued on the funds maintained or
8 reserved by the Trustee in the customer estate to the
9 general estate.

10 Nearly all of these funds were reserved in
11 connection with the FirstBank's customer claim litigation.
12 It was the last unresolved customer claim asserted against
13 the estate. Your Honor's order disallowing and expunging
14 FirstBank's claim became final on September 20th when it
15 didn't seek assert to the Supreme Court.

16 The Trustee has made prior requests for
17 reallocation from customer reserves to the general estate in
18 the distribution motions approved by the Court. To date,
19 based on the Court's ruling as to certain customer claims,
20 as well as subsequently confirmed in the Court's
21 distribution orders, the Trustee has reallocated
22 approximately \$2.3 billion from the customer estate to the
23 general estate, and distributed such funds to unallowed
24 general unsecured claims. This constitutes, Your Honor,
25 approximately 10 percentage points of the total 39 percent

1 distribution to date to the general unsecured creditors.

2 Through this proposed order, Your Honor, the
3 Trustee also seeks a decree closing the LBI estate, as
4 you've mentioned. The Trustee contends that he's satisfied
5 all of his duties to LBI's customer in the customer estate,
6 including those pursuant to SIPA, the Bankruptcy Code, and
7 other applicable law.

8 The customer estate has been fully administered,
9 and the Trustee submits its in the best interest of all
10 parties and interest to close the customer estate at this
11 time. SIPC has maintained close oversight of the customer
12 estate, from reviewing claims and the Trustee's proposed
13 determinations during the early phase of the litigation, to
14 Mr. Caputo successfully arguing SIPC's position on customer
15 claims such as Repos and FirstBank, all the way to the
16 Second Circuit; and, actually in Repos case, to the Supreme
17 Court.

18 SIPC supports the closure of the customer estate.
19 Unless Your Honor has any questions, we respectfully request
20 the Court enter the order.

21 THE COURT: Does Mr. Caputo wish to be heard?

22 MR. CAPUTO: No, Your Honor, other than to say
23 that this is an extraordinary remarkable conclusion to a
24 remarkable year. We're very, very proud of the efforts of
25 the Trustee. We think he's done a remarkable job in moving

1 this forward expeditiously, and we fully support the motion.

2 THE COURT: Well, I'll add some observations to
3 that. It is a remarkable day. I almost can't find the
4 words. As you're aware, I've been in this chair for four
5 years when Judge Peck handed me the baton.

6 And although the lion's share in connection with
7 the plan had been accomplished under his incredibly able
8 watch, he left with me rather a lot of litigation. And I
9 have watched folks from SIPC and Hughes Hubbard firm and
10 others work through that, through both hearings and trials,
11 and leading to results which were then able to go up for
12 appellate review, and we are where we are.

13 I've said it before and I'll say it again. I do
14 not think that in September of 2008 anyone would have
15 imagined that this would be the result where 100 percent of
16 customer claims have been paid; and there is, at this point,
17 just about 40 cents on the dollar available for the general
18 unsecured estate.

19 So not that we should all take this as an
20 indication that we would like this to ever happen again,
21 which we would not. And I would add to that that it appears
22 that through the work of the various regulatory agencies who
23 have authority over our banking system, broker-dealers,
24 derivatives, and everything else that came together to form
25 -- to create the perfect storm that caused the financial

1 crisis, from my perspective, the banks, the banking system
2 is much stronger. Indeed, there is some evidence that if
3 there were another shock to the system of the order of
4 magnitude of Lehman that various financial -- large
5 financial institutions would be able to withstand that.

6 That notwithstanding, we don't want to ever been
7 in this position again, and I cannot say enough about the
8 efforts of SIPC and the attorneys who have been working
9 behind the scenes and in the forefront all of these years.
10 It's very worth a lot of folks understanding that, and
11 that's -- these results are net of the tremendous cost
12 that's been incurred.

13 And on that point, I would also add, as you folks
14 know I've said before, that oftentimes in large insolvency
15 cases, there is a focus on the amount of the fees, because
16 standing alone, they are breathtakingly large. But it takes
17 a lot of work to resolve claims -- the number of claims and
18 the complexity of the claims that you were faced with.

19 So I will proudly and happily enter the order
20 providing for the closure of the customer estate.

21 MR. MARGOLIN: Thank you, Your Honor.

22 MR. CAPUTO: Thank you, Your Honor.

23 MR. MARGOLIN: May I move on to the next agenda
24 item?

25 THE COURT: Please.

1 MR. MARGOLIN: Second up, Your Honor, is the
2 uncontested motion for authority to abandon and destroy
3 certain data and documents maintained by the LBI estate. As
4 Your Honor noted, with many phases of liquidation complete,
5 this motion is actually the fifth in a series of data
6 abandoning motions --

7 THE COURT: Yes.

8 MR. MARGOLIN: -- the Trustee anticipates filing
9 with the Court as his professional determine that certain
10 documents and data are no longer necessary to effectuate the
11 estate's remaining workstreams; and, thereby, ripe for
12 abandonment and destruction in furtherance of the Trustee's
13 goals of reducing administrative expenditures in closing the
14 estate.

15 Your Honor most recently approved the abandonment
16 motion back in July, and that has been fully effectuated.

17 The current motion seeks to abandon -- seeks this
18 Court's authority to abandon and destroy certain data and
19 documents, including those maintained at the request of
20 FirstBank or/and related litigation of claimants, such as
21 the employee bonus claimants, documents that were called in
22 connection with Mr. Hoff -- the litigation of Mr. Hoffman.

23 THE COURT: Right.

24 MR. MARGOLIN: These litigations have been fully
25 and finally resolved. The abandonment of the estate and

1 documents will provide additional cost savings to the LBI
2 estate and its creditors.

3 Your Honor, we serve this motion essentially on
4 the world to make sure that everyone is okay with it.
5 Anyone who's made a document request, third-party request,
6 to the estate, all pending claimants. Otherwise, as Your
7 Honor could imagine, I get a lot of calls in connection with
8 this, particularly when we do this before Thanksgiving. On
9 the Wednesday before Thanksgiving, I become a popular guy.
10 But all those informal inquiries were resolved.

11 THE COURT: Okay.

12 MR. MARGOLIN: And SIPC supports this motion.
13 And, thereby, unless the Court has any questions with
14 respect to this motion.

15 THE COURT: So carved out in this are documents
16 that you might need or that the parties might need or ACATS
17 or ESEP or the RSU to come back down from the Appellate
18 Court?

19 MR. MARGOLIN: These all relate to other
20 litigations. And most of these documents, except for what
21 were called the Repo database which were productions in
22 connection with the Repo litigation, can be replicated
23 through the Trustee's access to legacy Lehman documents at
24 what we call the Iron Mountain Data Archive.

25 THE COURT: Okay, all right. So no one has

1 objected, so this motion will be granted.

2 MR. MARGOLIN: Thank you, Your Honor. Your Honor,
3 next before the Court is the Hughes Hubbard's 24th
4 application and the Trustee's and SIPC's joint request to
5 amend the interim compensation procedures as to Hughes
6 Hubbard. No objections have been filed to these requests.
7 SIPC filed its recommendation in support of the fee
8 application and is a party to the requested amendment to the
9 procedures order.

10 So the fee application for the period June 1
11 through September 30th, Hughes Hubbard expended 2927 hours,
12 for which approximately 182 were incurred by the Trustee,
13 for a total fee request of \$2,166,787.35. In addition to
14 the fees, the firm requests of total expenses of \$40,053.74.

15 As Your Honor knows, the firm provides a 10
16 percent public interest discount, which is reflected in the
17 application. In addition to that, we voluntarily adjusted
18 our fees by over 51,000, and also reduced expenses by
19 approximately 10,900.

20 The majority of work during the fee application
21 period was related to the very active claims litigation,
22 most notably the ACATS and the ESEP claims, including oral
23 argument before Your Honor on the ESEP claims during the
24 middle of the period.

25 The amendments of the procedures order follows the

1 form of the prior amendments approved by the Court. It does
2 leave a sizable holdback to my firm of \$250,000 of, assuming
3 the Court approves these fees, of Court approved fees.

4 Unless the Court has any questions, we
5 respectfully request entry of orders approving both
6 requests.

7 THE COURT: Okay. Mr. Caputo, anything from you?

8 MR. CAPUTO: No, Your Honor, other than to say we
9 support the motion.

10 THE COURT: Okay, very good. So both of those
11 applications will be.

12 MR. MARGOLIN: Thank you very much, Your Honor.

13 THE COURT: All right.

14 MR. MARGOLIN: That concludes the matters before
15 the Court today.

16 THE COURT: All right. Well, keep us posted.

17 MR. MARGOLIN: Great. Thank you very much, Your
18 Honor.

19 THE COURT: All right.

20 MR. MARGOLIN: Happy holidays and happy new year.

21 THE COURT: Thank you again. Happy holidays to
22 you and your team. Thank you.

23 MR. MARGOLIN: Thank you very much.

24 MR. CAPUTO: Thank you, Your Honor.

25 MR. MARGOLIN: We'll submit orders by email to the

1 Court.

2 THE COURT: Very good.

3 MR. MARGOLIN: Thank you.

4 THE COURT: Thank you. All right, Lehman other
5 folks, come on up. I'll be back out in five minutes while
6 you get set up.

7 (BREAK)

8 MR. SHUSTER: Good morning, Your Honor.

9 THE COURT: Good morning, Mr. Shuster.

10 MR. SHUSTER: Good morning, Mr. Grice.

11 THE COURT: Good morning, Mr. Grice.

12 MR. GRICE: Good morning.

13 [CROSS-EXAMINATION OF MR. GRICE BY MR. SHUSTER -- CONT]

14 Q Mr. Grice, we were on Loan 3301, and you should have
15 your Exhibit D, Appendix D. A promising start. So do you
16 want to take a moment to look that over?

17 A If I may.

18 Q Please.

19 A Thank you. Yes, sir, whenever you're ready.

20 Q Thank you, Mr. Grice. So let's start as we do with the
21 extract from your Appendix D. And there we have all of the
22 by now familiar rows and columns and boxes, culminating in
23 your review narrative in which you address the audit VOE and
24 state that you find it unreliable and say that there is
25 nothing in the file that points to a misrepresentation of

1 income. Are you with me?

2 A Yes, sir.

3 Q When you said there is nothing in the file that points
4 to a misrepresentation of income, sir, were you also taking
5 into account the additional information that was cited in
6 Mr. Aronoff's rebuttal, including the references to pay
7 stubs and other similar documents, tax returns?

8 A I can't give you a specific answer as to what the
9 reviewer looked at, so I don't know kind of the background
10 to the formation of that sentence or what material was
11 reviewed. As I look at it now, that last sentence appears
12 to be an error. It seems to be incorrect in its breadth,
13 right?

14 Q Very good. Thank you, sir. So would you turn to, in
15 the loan binder, to the claim package for 3301? And I'll
16 direct your atten -- which is TRDX-2 incidentally, and I'll
17 direct your attention -- well, let's start off with getting
18 the binder.

19 A Yes, sir. I'm at the claim package for 3301.

20 Q Okay. So permit me to direct your attention, Mr.
21 Grice, to Page 1 of 13 in there.

22 A Yes, sir.

23 Q That's where we have the -- incidentally, when you
24 talked about the scope of the statement in your narrative
25 being apparently an error. You're not, I take it, conceding

1 that there's a breach on this loan; you're merely commenting
2 on that one sentence and its wording and scope.

3 A I'm open to review of the facts. I don't have the
4 file, so I don't have the --

5 Q Okay, fair enough.

6 A But, you know, I'm certainly open to a review of the
7 facts.

8 Q Okay. So I'll direct your attention then to Page 1 of
9 the loan application, Mr. Grice.

10 A Yes, sir.

11 Q Just so we can orient ourselves. And we see the
12 borrower's name there, and then we see the name and address
13 of the borrower's employer.

14 A Yes, sir.

15 Q And the borrower's occupation, correct?

16 A Yes, sir.

17 Q And then on the next page, we see the -- an entry for
18 the borrower's income, which is 8,900 a month, which comes
19 out to, I guess, something in excess of \$100,000 a year;
20 8,000 a month, right -- 8,900, right, rounded 9,000 a month
21 would be 108,000 a year, so it's somewhere over \$100,000.

22 A I'll take your representation, yes, sir.

23 Q Okay. And we see the borrower's signature on the next
24 page, Page 3 of 13, indicating that the loan was -- well,
25 the loan application at least is signed and dated 9/27/05.

1 A Yes, sir.

2 Q And then if we -- if I could direct your attention, Mr.
3 Grice, to Pages 12 and 13 of the claim package. You see
4 there there's a request for verification of employment and
5 earnings, and there is a completed form. There is a form --
6 you're not going to -- you're not conceding it's completed,
7 but you're acknowledging there's information on it; is that
8 fair?

9 A Absolutely. Yes, sir, I agree with that.

10 Q All right. So, and on the form, we see the loan
11 applicant's name and the loan number referenced.

12 A Yes, sir.

13 Q And then the question, was the person listed above an
14 employee of the company. The answer yes is circled,
15 correct?

16 A Yes, sir.

17 Q Was the employee currently employed in 2005? It
18 appears that the word currently is struck, so that it -- the
19 question is, was the employee employed in 2005, and the
20 answer yes is circled.

21 A Yes, sir.

22 Q And then the third question is, what was the employee's
23 gross annual income? And someone appears to have in
24 handwriting added in 2005; do you see that?

25 A A question mark. Yes, sir.

1 Q Yes. Now, I take that to be that the person completing
2 the form was completing the question as what was the
3 employee's gross annual income in 2005. Is that the way you
4 read it?

5 A I'm -- I certainly understand that interpretation. I
6 don't -- I can't get inside the mind of Heather V. I
7 probably can't contact her either. But the letter
8 requesting this information specifically says 2005, so I
9 don't think the year 2005 is in question. So I just don't
10 know.

11 Q Okay. So then we have -- and there's an income number
12 reflected there of \$50,318.69, right?

13 A Yes, sir.

14 Q And then there's a question as to the employee is still
15 employed, and the answer yes is circled.

16 A Yes, sir.

17 Q So, and the form is dated 6/10/2015, correct?

18 A Correct.

19 Q So, then if I could direct your attention, Mr. Grice,
20 to page -- sorry, to the loan file excerpt, which is the
21 next tab, and to Page 297 of that. You can see that it's a
22 1040, a U.S. individual tax return for 2008, correct?

23 A Yes, sir, also unsigned.

24 Q The paid preparer's use box is filled out; do you see
25 that?

1 A I do.

2 Q Does, so does that indicate to you that there was a
3 paid preparer who filled out this tax form?

4 A Yes, sir. They provided a PTIN number, which is
5 helpful.

6 Q And do you know that it's a common practice for paid
7 preparers to e-file tax returns on behalf of taxpayers?

8 A I understand that. Yes, sir.

9 Q And then you see there's an income number on Line 7 for
10 wages and so forth for the year 2008, right?

11 A The 70,372 you're referring to?

12 Q Right, yes. So we're going forward three calendar
13 years from 2005 when the loan was taken out. And if the
14 2005 VOE is accurate, then it looks like the borrower's
15 compensation would have increased over the course of three
16 years. And in 2008, the number is 70,000 and change, right?

17 A That's correct. Again, we're three years and, like,
18 three months forward from the date of the application being
19 signed.

20 Q Right. So, and then the borrower's name is there. You
21 recognize the name from the loan application?

22 A I do.

23 Q And there's an indication of the borrower's occupation
24 in a couple of lines above the paid preparer's signature?

25 A Yes, sir. I see that.

1 Q And then there's a tax return for '09 at Page 255, Mr.
2 Grice, if I could direct your attention to that.

3 A Yes, sir.

4 Q And that, again, shows the borrower's name, and
5 indicates that it was -- the form was prepared by a paid
6 prepared, same paid preparer, and there's, again, a
7 reference to the borrower's occupation, correct?

8 A Correct.

9 Q And then there's an income number, which is higher than
10 the income number in 2005, right?

11 A Yes, sir.

12 Q Looks like it's about \$8,000 higher.

13 A Yes, sir.

14 Q So then permit me to direct your attention, Mr. Grice,
15 to Page 253. And that's a 2010 pay stub, correct?

16 A Yes, sir.

17 Q Same employer, same -- you see an indication same, the
18 name of the borrower, correct?

19 A Correct.

20 Q I'm not going to do the math there, but that's for the
21 first -- that's for the first two months and six days of the
22 year, right?

23 A Yes, sir.

24 Q So you could project that out over the course of the
25 year, and you'd get a number in the vicinity of \$80,000 or

1 something like that.

2 A That's correct.

3 Q And then if we could look at Page 290. That's another
4 pay stub for 2011, same employer, correct?

5 A Correct.

6 Q And that shows income for greater part of the year that
7 runs through the end of October. And it shows an income
8 number of \$70,000, right?

9 A Yes, sir.

10 Q Up to that point in time.

11 A That's correct.

12 Q So if you projected that out, that would come out to
13 something like 84,000 for the year.

14 A Yeah, it looks like the rate of pay for 80 hours has
15 gone up to 2,925 from 2,789 in 2010.

16 Q Right. And then there is a hardship letter on the
17 opposite page. Do you see that, Page 261?

18 A I do.

19 Q And you see that the hardship letter is directed to
20 Aurora Loan Services loss mitigation dated April 4, 2009?

21 A Yes, sir.

22 Q Same, you see the borrower's name down there?

23 A I do.

24 Q There's no reference in the hardship letter to any drop
25 off in income or loss of job or anything or change of job or

1 anything like that, correct?

2 A No, I agree. He's discussing his -- the hardship he's
3 facing, but that appears to be the increase in costs and a
4 loss of equity in the property.

5 Q Right. And he refers in the fourth line up from the
6 bottom of the first paragraph to the fact that he has a good
7 income.

8 A I see that. Yes, sir.

9 Q And then if you flip back a couple of pages to Page
10 258.

11 A Yes, sir.

12 Q There's a hardship letter submitted for the -- forgive
13 me -- a hardship affidavit, correct?

14 A Correct.

15 Q And that's submitted to Aurora Loan Services, and
16 signed by the borrower on Page 260?

17 A Yes, sir.

18 Q And there, the borrower is asked to check certain boxes
19 as to whether there's been a loss of income, for example.
20 So the first line, my income has been reduced or lost, and
21 then it goes on to say, for example, unemployment,
22 underemployment, reduced job hours, reduced pay, et cetera.
23 And the box no is checked, right?

24 A I see that. Yes, sir.

25 Q And so based on this, you concluded that there was no

1 breach. Do you stick with that?

2 A I don't, having looked at this and thought about it
3 since we reviewed the documents yesterday. We've not
4 pointed out some inconsistent facts. There's evidence that
5 his employer may, in fact, not be simply a hospital; but
6 may, in fact, be a service. There's a reference -- I don't
7 want to name the -- it seems to be an employment agency for
8 respiratory therapists perhaps, which is referenced a couple
9 of times in the documents. But setting -- I mean, having
10 reviewed all of this, I think this is a situation where more
11 likely than not, he misrepresented his income at
12 origination.

13 Q Okay. Thank you, sir. So let us --

14 MR. SHUSTER: May I just have a brief moment, Your
15 Honor?

16 THE COURT: Sure.

17 MR. SHUSTER: Thank you.

18 Q Thank you, Mr. Grice. I'll now direct your attention,
19 Mr. Grice, if I could to Loan 8455. And in connection with
20 that loan, the extract from your Appendix D is TRDX-30,
21 which Mr. Lieberman is handing out.

22 THE COURT: I'm sorry. What was the loan number,
23 Mr. Shuster?

24 MR. SHUSTER: The loan number, Your Honor, is
25 8455.

1 Q It's a bit of a heavy lift to read through this. I'll
2 give you a moment. Please let me know.

3 THE COURT: All right. I need a little more help.
4 Where is -- is there anything related to this loan in the
5 binder?

6 MR. SHUSTER: It's the first tab.

7 THE COURT: I see, okay. Mr. Shuster, I'm sorry
8 to do this. But is there a difference between this loan
9 file excerpt that was handed to me and what's in the binder?

10 MS. BRASWELL: What the replacement, the original
11 loan file excerpt --

12 THE COURT: Yes.

13 MS. BRASWELL: -- had a misprinting.

14 THE COURT: Okay. So take this one out and put
15 the other one in.

16 MS. BRASWELL: Right.

17 THE COURT: Thank you.

18 Q If you're done reading the narrative, sir, we can walk
19 through the loan file together. I see you're starting to do
20 that, and I certainly don't want to stop you, but we will be
21 going through it together. If there's any part of you want
22 to refer to, you're certainly free to.

23 A Good. I may need to stop the clock, but let's go ahead
24 and proceed.

25 Q Okay. So just by way of orienting us, this is a

1 misrepresentation of debt claim by the Trustees?

2 A Yes, sir.

3 Q And it's predicated on two pieces of evidence -- a MERS
4 report and a credit report, as well as, of course, the loan
5 application itself.

6 A Bear with me.

7 Q Yes, this one's a slug.

8 A So it's based on a MERS report and an audit credit
9 report pulled April 13, 2015.

10 Q And the assertion is that the loan application fails to
11 disclose mortgage debt that are reflected on the MERS
12 reports and the audit credit report, correct?

13 A Correct.

14 Q And the Trustees' estimate a mortgage payment for the
15 debt that they say is reflected on the MERS report and the
16 credit report, correct?

17 A Correct, and I cite that in my response.

18 Q Right, so you cite that. You don't contest the
19 estimate you adopted. And then you -- that you adopted at
20 least for purposes of your response -- and then you estimate
21 rent on the property and you do some math using the
22 Trustees' estimated mortgage payment on the alleged
23 undisclosed debt, fair?

24 A That's correct. We calculate the fair market rent, we
25 adjust it for vacancy, and come to this net income

1 representation of a positive number that's reflected in the
2 third paragraph of my response.

3 Q The -- you don't appear to contest the fact that the
4 MERS report and the credit report are in the file and that
5 they say what the Trustees say they say.

6 A I'm not disputing that they're in the file. It's
7 always the question of what weight you place on the
8 interpretation of those facts and documents. But their
9 presence in the file is not in dispute, or that the data
10 reflected on them is the data reflected on them.

11 Q Okay. And you also, in fairness, you referred to what
12 you view to be compensating factors.

13 A I discuss that in the last paragraph. Yes, sir.

14 Q So let's now walk through the loan file, the claim
15 file, Mr. Grice. And we'll start at the loan file excerpt
16 if we could, which has the loan application. So there's a
17 tab loan, right?

18 A And here, I'm not using the substituted application; is
19 that correct?

20 Q This is the replace -- you should have a signed loan
21 application in there, and it should bear Page numbers 126
22 through 128 of 673. And if it doesn't, I apologize.

23 A That's right. So I will apply the new version of the
24 file up to the loan application to -- I thought that was
25 supposed to go to the claim package excerpt, but I will now

1 place it in my loan file excerpt for the subject loan.

2 Q Thank you. So we have there some information that we
3 need to look at to walk through this. There's a loan
4 amount, you see that, of 142,400.

5 A Yes, sir.

6 Q There's the subject property; that is to say, the
7 property that's the subject of the mortgage loan, right?

8 A Correct.

9 Q And the address for that, the borrower's name --

10 A Correct.

11 Q -- further down the page, and the borrower's, what is
12 identified as the borrower's present address, correct?

13 A Correct.

14 Q And then on the next page, there is -- that's where it
15 calls for the borrower to disclose liabilities.

16 A Yes, sir.

17 Q And if the Trustees are right about that MERS report
18 and the audit credit report reflect mortgage debt of the
19 borrower that predates the closing, then that mortgage --
20 that preclose mortgage debt is not identified where it
21 should be on the loan application, correct?

22 A That's correct. Yes, sir.

23 Q And if I may direct your attention to the next page of
24 the loan application, Mr. Grice, you see there at the top
25 that the borrower's present address is identified as a

1 rental property, correct?

2 A Correct, with a rental income associated with it.

3 Q Do you know if -- okay, with a rental income associated
4 with it, correct. Then I'll just point out to you, if you
5 go into below that, details of transaction, you'll see in
6 Line J, there's a reference to subordinate financing.

7 A Yes, sir.

8 Q Does that indicate to you that a second mortgage or a
9 second lien applies to the same property and was part of
10 this transaction?

11 A That would be my understanding.

12 Q Okay. And that number is 35,600.

13 A Correct.

14 Q And the loan closed on June 4, 2004, correct?

15 A Yes, sir.

16 Q Well, I should say the application is signed.

17 A The application is signed.

18 Q Right, June 4, 2004. So then if we could go into the
19 claim package. Oh, I should have pointed out, Mr. Grice, my
20 apologies. But in the loan application we were looking at a
21 moment ago, there was no rental income identified for the
22 property that the -- that would be the subject of what the
23 Trustees allege is the undisclosed mortgage.

24 A That's correct.

25 Q And that property is not identified at all there in the

1 rental income section of the loan application.

2 A That's correct.

3 Q So then if we -- well, we're now at Page 14 in the
4 claim package tab for Loan 8455, so that's the prior tab in
5 the binder, at least I hope it is.

6 A I'm sorry, which page?

7 Q So we'll be at Page 14 of 27.

8 A I'm there.

9 Q Thank you. So this is, you recognize this as a credit
10 report?

11 A This is the, I believe, the audit credit report pulled
12 on April 13 of 2015.

13 Q So we see there the borrower's name?

14 A Yes, sir.

15 Q And the borrower's social security number?

16 A Yes, sir.

17 Q Are social security numbers customarily used as the
18 basis to pull credit reports?

19 A Yes.

20 Q And then we see the subject property address; do we
21 not? You might have to refer back.

22 THE COURT: Where are we looking for that, Mr.
23 Shuster?

24 MR. SHUSTER: It's on the credit report on the
25 left side.

1 THE COURT: What's the page number?

2 MR. SHUSTER: 14 of 27, there's a box there,
3 applicant. And under that, there is the borrower's name,
4 the borrower's social security number.

5 THE COURT: I see. Thank you.

6 Q And the subject property address, correct?

7 A So the subject property is 5915.

8 Q Oh, yeah.

9 A I'm not naming the street.

10 Q Okay, good. Yeah.

11 A And is it on -- I'm just trying to find it on the audit
12 credit report.

13 Q You can --

14 A Oh, I see it.

15 Q You see it?

16 A Yes, yes.

17 Q Okay.

18 A There's some numbers on this page.

19 Q There are a lot of numbers on this page and a lot of
20 pages in this file.

21 A I did locate it.

22 Q And then there is the current address. You see a
23 current address number.

24 A Yes, sir.

25 Q And that's the property that is disclosed as a rental

1 property on the loan application. Do you see that?

2 A That was the departing address.

3 Q Right. Then there's two other previous addresses. Do
4 you understand from the credit report that those previous
5 addresses were properties that the borrower owned?

6 A Or rented or was associated with.

7 Q Okay. So, then let's turn, if we could, to Page 15,
8 which is the very next page. It should be the facing page
9 of the credit report. And if we go down to the fourth and
10 fifth rows, we see the subject debt, correct?

11 A These are the highlighted in gray rows?

12 Q Those are highlighted in gray, yeah. There the two
13 adjacent rows highlighted in gray?

14 A Yes, sir.

15 Q And we see the date is consonant with the date the loan
16 application was signed?

17 A Yes, sir.

18 Q And then we see the loan amounts for both liens, the
19 142.4 and the 35.6 that we looked at earlier, correct?

20 A Yes, sir.

21 THE COURT: I'm sorry. Where is that?

22 MR. SHUSTER: Your Honor, that's at --

23 THE COURT: I'm looking at two things that say
24 Aurora Bank, right?

25 MR. SHUSTER: Right. So, there's Aurora bank and

1 then the --

2 THE COURT: Okay.

3 MR. SHUSTER: -- the creditor account column, and

4 then their fourth --

5 THE COURT: Okay.

6 MR. SHUSTER: -- column across, opened --

7 THE COURT: Okay.

8 MR. SHUSTER: -- that has the dates. And then

9 limit or highest credit that has the amounts.

10 THE COURT: Okay.

11 Q So, that is -- you've identified that, sir, as the
12 subject matter, correct?

13 A Yes, sir.

14 Q And then, if we look down further, we see two
15 additional rows for Aurora, only one of which is
16 highlighted, but both of which are identified as
17 undisclosed. Do you see that?

18 A I do.

19 Q And --

20 THE COURT: I'm sorry. I'm just not following
21 you.

22 MR. SHUSTER: I'm sorry, Your Honor.

23 THE COURT: We're going to have to come up with a
24 better --

25 MR. SHUSTER: It's the --

1 THE COURT: Okay, okay, but there -- okay.

2 MR. SHUSTER: This is seventh and eighth rows --

3 THE COURT: Okay.

4 MR. SHUSTER: -- and in the first column, creditor
5 account number, there is the word undisclosed --

6 THE COURT: Okay.

7 MR. SHUSTER: -- in both of those lines.

8 THE COURT: One is Aurora and one is Bank of
9 America?

10 MR. SHUSTER: Yes.

11 THE COURT: Okay.

12 Q Do you understand, Mr. Grice, that those words,
13 undisclosed, were put there by someone involved in the
14 Trustees' loan and review process and were not there on the
15 credit report that was pulled originally?

16 A That's my understanding.

17 Q And so, if you would look at the opened column, you'll
18 see that the opened date that's given is May of '04,
19 correct?

20 A Correct.

21 Q And the subject that was June of '04.

22 A Correct.

23 Q So, if the Trustees are correct that these two lines in
24 the credit report reflect undisclosed debt of the borrower,
25 then that debt would have predated at least the signing of

1 the loan application by a month?

2 A Yes, sir.

3 THE COURT: Can I ask a question, because I'm not
4 following this. You established by looking at the loan
5 application that June 4 was the date that the loan
6 application was signed. Now we're looking at these two
7 loans that were marked undisclosed, right?

8 MR. SHUSTER: Yes.

9 THE COURT: And the opened column, which is the
10 fourth column over, fifth column over, it says opened, O-P-
11 N-D, right?

12 MR. SHUSTER: Yes.

13 THE COURT: And they say May 4, okay?

14 MR. SHUSTER: Correct.

15 THE COURT: What is there that tells when any of
16 these loans closed?

17 MR. SHUSTER: Well --

18 THE COURT: That's question number 1. And
19 question number 2 is, Mr. Grice, do you have an
20 understanding of the other notations on the rows for each of
21 the two loans that are indicated to be undisclosed? The
22 Aurora Bank loan says transferred conventional real estate
23 mortgage, and the Bank of America loan says transferred.
24 So, I just would love to have a better understanding of what
25 I'm looking at here.

1 MR. SHUSTER: Understood.

2 MR. GRICE: And I can't give you an accurate
3 answer, Your Honor, of -- each one of these credit bureaus
4 uses very specific vocabulary and very specific code
5 language. So, I don't have an interpretation that I can
6 offer.

7 Q Do you know, sir, whether the expression transferred
8 conventional real estate mortgage indicates that the
9 mortgage was originated or not originated by Aurora, or
10 might been transferred to Aurora from another entity? Do
11 you know?

12 A I'm not sure what you're asking. I'm sorry.

13 Q Well, can you tell from the words transferred
14 conventional real estate mortgage whether Aurora was the
15 originator or whether another bank -- another entity might
16 have been the originator?

17 A I can't tell specifically.

18 Q And then --

19 THE COURT: Can you -- I mean, can you tell, on
20 this kind of a credit report, the -- first of all, what's
21 ECOA, the column that's farthest to the left? What does
22 ECOA stand for? Do you know?

23 MR. GRICE: That's the Equal Credit Opportunity
24 Act. So, it's a -- this is a flag on the credit report for
25 loans that would be subject to the terms of the ECOA.

1 THE COURT: Okay. And then creditor and account
2 number. And what's RPTD? Seems like it's a shortened
3 version of reported. What does that refer to?

4 MR. GRICE: In my -- again, each bureau is
5 different, but typically, that's the date that the bureau
6 last received a report from a creditor about that account.

7 THE COURT: Okay. And then what's the last
8 column, last ACT?

9 MR. GRICE: I don't know how this firm is using
10 that phrase. Sometimes there are glossaries attached, and I
11 don't believe we have one here.

12 THE COURT: Okay. And opened -- what does that
13 mean?

14 MR. GRICE: That's the month that the
15 relationship, the credit was born, according to the credit
16 bureau.

17 THE COURT: Okay. Thank you. Go ahead Mr.
18 Shuster.

19 MR. SHUSTER: Thank you, Your Honor.

20 Q I'll note, Mr. Grice -- not to complicate matters --
21 but that there is a further debt that seems to be a post-
22 closing mortgage debt on 8/4. Do you see that? That's
23 above the first undisclosed loan.

24 A I'm sorry. So, you're trying to point out that in the
25 row above the first undisclosed row, there is an -- you're

1 saying it's an additional undisclosed debt?

2 Q Well, it's an additional debt. It's post-closing,
3 right?

4 A Correct. This would be August of '04.

5 THE COURT: Okay. But we -- I'm sorry. I don't -
6 - do I have in the record when this loan -- when the subject
7 loan --

8 MR. SHUSTER: Subject loan.

9 THE COURT: -- closed?

10 MR. SHUSTER: Yes. Yes, so if Your Honor turns to
11 Page 24 at the same tab, that has a note date of June 3,
12 2004, and on Page 27, it shows the borrower's signature.

13 THE COURT: My question stands. When did the loan
14 close?

15 MR. SHUSTER: Well, I mean, I'm not going to --
16 I'll see if I can find something else. We usually go by the
17 note date with the loan application, the final signed loan
18 application, because typically, those are executed at
19 closing.

20 MR. COSENZA: Your Honor --

21 THE COURT: Hello, Mr. Consenza.

22 MR. COSENZA: -- (indiscernible) this is very
23 confusing. We have an unsigned loan application. We have a
24 signed loan application --

25 THE COURT: Okay, hold on, hold on. Why don't you

1 come up?

2 (Bench Conference)

3 Q Mr. Grice, is there a sort of an industry standard for
4 understanding when a mortgage closed? Would that usually be
5 the note date?

6 A I would not say there's a clear industry standard. I'd
7 say there are at least two, maybe three, you know, the note
8 date. If there are closing documents, and I don't see any
9 closing documents here, it may be that the application was
10 signed at the closing itself, which would not be uncommon.

11 Q Very good. So, we've identified, I think, the alleged
12 undisclosed debt, correct?

13 A Obviously, there are data entries on both an audit
14 credit report from the future and from MERS that reflect
15 what may be undisclosed debt --

16 Q Right.

17 A -- a week to 10 days prior to June 3rd or June 4th.

18 Q Right. So, I'm glad you brought up -- I think I'm glad
19 you brought up the MERS credit report. Let's have a look at
20 that, if we could, which is at Page 21 of 27. So, there we
21 have -- so, would you identify what MIN stands for?

22 A That's the mortgage identification number. It's the
23 unique number for that mortgage.

24 Q So, we see -- and we see the borrower's name there at
25 the -- for the subject property. You see the subject

1 property address 5195? It's the first one identified.

2 A Oh, thank you. Yes, sir.

3 Q Primary borrower, and we see the borrower's name?

4 A Yes, sir.

5 Q And I'll just note over to the right there is a note
6 date.

7 A Correct.

8 Q So, what does that signify to you?

9 A That's the date that MERS understands that there was a
10 note signed.

11 Q Would the -- okay, so --

12 A That's what's being reported by the lender to MERS as
13 the date of the obligation, ostensibly, I mean,
14 theoretically.

15 Q Yes. And then we see another line for the subject
16 property, and so we have again there the two tiers of
17 financing for that property, right? The 142.4 and the 35.6
18 that we've seen previously on the loan application and on
19 the credit report?

20 A Yes, sir.

21 Q And then we see the property that is identified on the
22 loan application as the departing property, correct? It's
23 the third address down. You've got 5915, 5915, 4238.

24 A This is the 4238 address, yes, sir.

25 Q And that's the one that was identified as the borrowers

1 departing property, and that was identified as the source of
2 rental income on Page 3 of the loan application that we
3 looked at together?

4 A Correct.

5 Q And then we had the property --

6 THE COURT: Whoa, whoa, whoa, whoa, whoa, whoa.

7 MR. SHUSTER: Sorry.

8 THE COURT: Let's finish, okay? We're at the
9 property that's 4238, right?

10 MR. SHUSTER: Yes.

11 THE COURT: And that's been flagged in the credit
12 report as undisclosed, yes? No?

13 MR. SHUSTER: No, it's the next one that's
14 undisclosed, the 42 --

15 THE COURT: Okay, what's the 4238?

16 Q The 4238, Mr. Grice, is identified in the loan
17 application as the borrower's current address, which is to
18 say the address he's departing, correct?

19 A Correct. I just observed that the note date for the
20 departing address is in the future. It's two months after
21 the closing of the subject property.

22 Q Right. And there's a note amount there?

23 A Of the 128?

24 Q Right.

25 THE COURT: Right.

1 Q So, do you think it's possible that that means that the
2 borrower refinanced that property?

3 MR. COSENZA: Your Honor, I can object to every
4 one of these questions. I don't want to bog things down,
5 but this calls for speculation, lack of foundation. We
6 don't know what the borrower, where he was --

7 THE COURT: Okay, well --

8 MR. COSENZA: I could do this all -- I don't want
9 to interrupt all day.

10 THE COURT: You need to ask a different question.
11 We're not going to ask whether he thinks -- I mean, it's
12 just --

13 MR. SHUSTER: Okay.

14 THE COURT: Okay?

15 MR. SHUSTER: Yes. An amount is -- that's fair.

16 THE COURT: I'm glad you think so, Mr. Shuster.

17 MR. SHUSTER: No, I don't -- I'm sorry, Your
18 Honor, I'm just -- I was a step back responding to Mr.
19 Consenza. Anything you say is fair.

20 THE COURT: I'm sure it is.

21 Q So, let's -- you've noted that. Mr. Grice, let's keep
22 going. Then we have identified what the Trustees allege is
23 the undisclosed debt, right?

24 A Yes, sir.

25 Q That's the 1530?

1 A Thank you. Yes, sir.

2 Q And there is another entry for 1530 on the next page?

3 A Yes, sir.

4 Q And both of those show a note date of May 21, 2004?

5 A They do.

6 Q And in the credit report, these mortgages were
7 identified as having been opened in May of 2004?

8 A Yes. That appears to be the same.

9 Q Okay. So, that's the basis for the Trustees' assertion
10 that there is an undisclosed debt, correct, those reports,
11 those entries in those reports?

12 A That is the evidence they point to. Yes, sir.

13 Q So, before we get to your calculation of rental income
14 for the undisclosed property, do you accept, yes or no, that
15 the credit report and the MERS report, read together, make
16 it more likely than not that the borrower had undisclosed
17 pre-closing mortgage debt here?

18 MR. COSENZA: Your Honor, just on that question, I
19 object to -- we've had all sorts of questions on the
20 reliability of these sources.

21 THE COURT: Well, I'm going to overrule your
22 objection, Mr. Cosenza. I mean, this goes to the heart of
23 the type of valuation that Mr. Grice was doing.

24 MR. COSENZA: Thank you, Your Honor.

25 THE COURT: Okay. Could you repeat the question

1 please, Mr. Shuster?

2 MR. SHUSTER: Yes.

3 Q So, before we get to your calculation of rental income
4 for this property --

5 A Yes, sir.

6 Q -- do you accept, yes or no, that the credit report and
7 the MERS report, read together, make it more likely than not
8 that the borrower had undisclosed pre-closing mortgage debt?

9 A I can't go quite that far, and the reason is there are
10 some question raised by the MERS data. I mean, for example,
11 if you'd notice between the 5195 address and the 4238
12 address and the 1530 address, the borrower name is
13 inconsistent. It's Joseph in two instances and in the
14 undisclosed property it's -- I'm sorry, it's Joseph in the
15 two disclosed, and in the one undisclosed, or allegedly
16 undisclosed, it's Joe. I don't know how to account for
17 that.

18 There's also an empirical question that could be
19 resolved. Courthouses maintain copies of mortgage document
20 registration and would be the ultimate source, I think, for
21 whether the undisclosed debt in fact exists. I don't have
22 that information for what the courthouse would have in Las
23 Vegas, but that would be a part of the analysis I'd want to
24 perform.

25 Q So, you see a discrepancy between the names Joe and

1 Joseph? You acknowledge that debt amounts that are
2 reflected for the 1530 property are in the same amounts as
3 the debt amounts that are reflected on the audit credit
4 report, yes?

5 A Yes, sir.

6 Q And you also acknowledge that the audit credit report
7 was run based on the social security number of the person
8 named Joseph, correct

9 A Yes, sir.

10 Q Okay. So, now, you then go on in your narrative to say
11 that the audit credit report does not -- by the way, do you
12 see any evidence that shows -- have you seen any evidence in
13 the file that shows that these are not debts of Joseph?
14 Anything to show that they're debts of another person?

15 MR. COSENZA: Your Honor?

16 THE COURT: I'm sorry. Yes.

17 MR. COSENZA: Just a side bar for one second on
18 this?

19 THE COURT: Okay.

20 MR. COSENZA: I don't want to -- because this
21 could affect the witness, I think it's --

22 THE COURT: All right.

23 (Bench Conference)

24 Q Mr. Grice, I asked you a question, which is do you see
25 any evidence that indicates that the alleged undisclosed

1 debt was undisclosed debt of another borrower? Based at
2 least -- I don't see in your narrative where you point to
3 any such evidence. Do you?

4 A I don't point in my narrative to whether another --
5 whether it's disclosed or undisclosed debt of another
6 borrower. Just a -- I mean, it's a decidedly different
7 question I'm answering, but I don't point to any evidence
8 that there may be someone else who's obligated.

9 Again, just to be clear, the mortgage record for
10 that alleged undisclosed property is sitting in a
11 courthouse. I believe Las Vegas is not a courthouse. It is
12 online and requires somebody to physically go to the Las
13 Vegas, and then pull the document.

14 What the mortgage which show is who has an
15 ownership interest. It would not show us who is on the
16 note. And so, in a perfect world, we would have access to
17 the note for the undisclosed property. Those aren't public.
18 So, I can't come to a complete answer to that question.

19 Q All right. But my question was actually different. My
20 question was in your narrative, you don't point to any
21 evidence that shows that the alleged undisclosed debt of
22 this borrower was in fact debt of another person, correct?

23 A And I answer that, sir.

24 Q And the answer is I'm correct?

25 A Correct.

1 Q Good. So, what you then do is you calculate fair
2 market rent on the undisclosed property, right?

3 A Yes, sir.

4 Q You don't know that the borrower rented out the
5 undisclosed property, correct?

6 A There are many things we don't know. That's one of the
7 things --

8 Q Right.

9 A -- we don't know. That's one of the things --

10 Q I'm just --

11 A -- we don't know.

12 Q -- focusing on what you don't know --

13 A Yes, sir.

14 Q -- with respect to the rent that you calculated though.

15 A Yes.

16 Q Okay?

17 A It's an estimation.

18 Q You don't know that the borrower rented out that
19 property, correct?

20 A Correct.

21 Q The borrower identified on the loan application a
22 property that he was renting out, right?

23 A That's correct.

24 Q Did not identify the property that is the subject of
25 the undisclosed debt on the loan application as a property

1 that he was renting out, correct?

2 A That's correct.

3 Q If he wanted to identify that property as a source of
4 rental income, he was certainly free to do so, correct?

5 A Nothing bars him from that.

6 Q And he does not do so?

7 A It's not on the application, correct.

8 Q Okay. So, you then -- when you calculate undisclosed
9 debt, you go to some public source for that information?

10 A The Department of Housing and Urban Development.

11 Q Okay. So, that just gives general statistics of rents
12 for that area?

13 A By characteristics of the property.

14 Q By characteristics of the property. So, but that
15 doesn't identify that that borrower actually rented that
16 property at that price?

17 A Exactly.

18 Q Okay. Now, then you go ahead and you point to
19 compensating factors, what you identify as compensating
20 factors, right?

21 A Yes, sir.

22 Q But if the loan underwriter didn't know about
23 undisclosed debt in the approximate amount of \$177,000, he
24 could not have weighed that debt when assessing compensating
25 factors, correct?

1 A Or she. Correct.

2 Q Okay. Incidentally, the plan administrator says that
3 the evidence -- in its response on this loan, says the
4 evidence is unreliable and insufficient because it relies on
5 an inadmissible, uncorroborated report, and it fails to show
6 undisclosed debt at origination. Do you see that?

7
8 A Yes, sir.

9 Q When you said that you agree with the plan
10 administrator, I take it you are not opining that the
11 evidence is inadmissible in court?

12 A I'm not an attorney, so I can't speak to the
13 admissibility of evidence.

14 Q Let's go to the next loan, Mr. Grice, which is 7599.

15 MR. SHUSTER: And for that, we will need TRDX-43.

16 THE COURT: Ah.

17 MR. SHUSTER: Upgrade here. Thank you.

18 THE COURT: Thank you.

19 Q Mr. Grice?

20 A Yes, sir.

21 Q So, this is an occupancy -- alleged occupancy breach
22 put forward by the Trustees?

23 A Yes, sir.

24 Q And you agreed with the plan administrator's rejection
25 of this breach?

1 A Correct.

2 Q So, let's look at the evidence, Mr. Grice. In the
3 claim package, at Page 17, you'll find the loan application.
4 At least I hope you will.

5 A Yes, sir.

6 Q So, that -- the loan application shows the subject
7 property as in Arizona and the borrower's present address is
8 in Washington D.C., correct?

9 A Yes, sir.

10 Q And the borrower checks the box that the Arizona
11 property, which is to say the subject property, will be his
12 primary residence, correct?

13 A Yes, sir.

14 Q And he identifies his employer as a company in
15 Washington, D.C.?

16 A Yes.

17 Q And he signs the loan application on Janaury 27, 2005.

18 A That's correct.

19 Q And then if we go to Page 23 of the claim package,
20 that's an Accurint report?

21 A Yes, sir.

22 Q And that is run on the borrower's Social Security
23 number, correct?

24 A Yes, sir.

25 Q And there's -- both the subject property address

1 (indiscernible) the borrower's existing address are
2 reflected on that report, correct?

3 A Correct. I believe the Trustees have put a circle
4 around the subject property and a box around the departing
5 property.

6 Q Correct. Thank you, sir. And then there is another
7 Accurant report that appears at Page 25, correct?

8 A Yes, sir.

9 Q And that Accurant report has -- was also run on the
10 borrower's Social Security number, right?

11 A Correct.

12 Q And there the Trustee's loan reviewers placed a
13 rectangular box around the information relating to the
14 borrower's employer as it was identified on the January '05
15 loan application, right?

16 A Yes, sir.

17 Q And this associates the borrower with as general
18 manager of that entity from the period September of '04 to
19 July of 2012, correct?

20 A That's what is stated on the page.

21 Q And then if we turn to Page 29 -- just if the
22 borrower's still working in D.C., then it's hard to believe
23 that he was -- his principal residence was in Arizona,
24 correct?

25 MR. COSENZA: Objection. Calls for speculation.

1 MR. SHUSTER: I think it calls for the witness to
2 draw the same types of inferences he's been drawing from
3 other evidence.

4 THE COURT: Ask the question a different way, Mr.
5 Shuster, please.

6 Q Can you draw an inference, Mr. Grice, of the sort that
7 you say you can draw that the -- if the borrower was --
8 continued to be employed in Washington D.C., then a property
9 in Arizona was unlikely to be --

10 THE COURT: Let me -- can I --

11 MR. SHUSTER: -- his primary residence?

12 THE COURT: Can you tell me direct, Mr. Grice, to
13 the specific piece of information from which you're asking
14 him to draw the inference that the borrower was employed in
15 Washington D.C.

16 MR. SHUSTER: I'm looking at the Accurint report
17 that's at Page 25, Your Honor.

18 THE COURT: Okay. Page 25?

19 MR. SHUSTER: Yes. The rectangular box in the
20 middle of the page.

21 THE COURT: Okay. So, you're asking the witness
22 based on that can he draw a conclusion or does he have an
23 inference as to where the borrower was employed, right?

24 MR. SHUSTER: Not as to where he was employed. We
25 covered that, although I'm happy to have you answer that

1 question, too.

2 THE COURT: Well, I'm sorry, what was your
3 question?

4 MR. SHUSTER: Was question was if the borrower is
5 in fact -- continued to be employed in Washington D.C. --

6 THE COURT: Okay. But that's what I'm trying to
7 get to.

8 MR. SHUSTER: Yes.

9 THE COURT: You are saying he was employed in
10 Washington D.C.

11 MR. SHUSTER: Yes.

12 THE COURT: My paycheck comes from Washington D.C.

13 MR. SHUSTER: Yes.

14 THE COURT: I'm obviously not there right now.

15 MR. SHUSTER: Right. But --

16 THE COURT: So, that's what I'm asking for
17 clarification about.

18 MR. SHUSTER: Right. Okay.

19 Q Well, can you conclude -- can you infer from the
20 Accurant report that identifies the borrower as the general
21 manager of JCC Georgetown from September '04 to -- from
22 September 2004 to July 2012, that he was employed by that
23 entity in that time period?

24 A I could draw an inference of very low quality. These
25 reports are very unreliable. I hope I made that clear in

1 the direct. Accurint reports are very unreliable. So,
2 there is some -- somebody is reporting a relationship
3 between that employer and this individual . As to where he
4 -- and I -- separately, I don't see a claim for
5 misrepresentation of employment. If that's the issue, I'd
6 like to see the evidence that gets to where he was actually
7 employed. Nevertheless, I can't conclude that there's a lot
8 of inferential value in the Accurint report.

9 Q Well, let me just -- going to the other point that was
10 raised, that entity, JCC Georgetown, does that strike you as
11 a federal government entity, Mr. Grice?

12 A I have no idea. I mean, I'm not sure why you're asking
13 about that. I -- it could be a federal agency. I don't --
14 I'm not aware of a federal agency called that. I just don't
15 know what that -- I don't know what JJC is, if it's a retail
16 establishment, the headquarters of a consulting firm. I
17 just don't think you can draw strong inferences based on a
18 reporting -- a report that comes up through unknown source -
19 - undisclosed sources.

20 Q Okay. Well, let's look in the loan file excerpt, Mr.
21 Grice, for loan 7599 at Page 481 and 482.

22 A Okay. I see tax-related documents.

23 Q Right. So, Page 482, Mr. Grice, is a W-2. You see
24 that?

25 A Yes, sir.

1 Q For the borrower?

2 A Yes, sir.

3 Q From 2010?

4 A Yes, sir.

5 Q That was -- that identifies his employer as the entity
6 that he identified as his employer on the 2005 tax return,
7 correct?

8 A Correct.

9 Q And it shows \$40,587 in income, right?

10 A That's what it shows.

11 Q And there's another document on the left that shows an
12 address in Virginia, correct, for this borrower?

13 A Correct.

14 Q And then let's flip forward one page to Page 483.
15 That's a tax return, right?

16 A Yes, sir.

17 Q That tax return shows the borrower's address in 2010?

18 A In Virginia, yes, sir.

19 Q And that address matches the 2010 W-2 that we saw on
20 just the prior pages, correct?

21 A It does.

22 Q Yes or no, you're unprepared to infer from that that
23 the borrower continued to reside and work in the D.C. area
24 in 2010? Yes or no? 2005.

25 A I thought I said --

1 THE COURT: Hold on. Hold on.

2 MR. SHUSTER: 2005.

3 THE COURT: Well, that --

4 MR. SHUSTER: Well, either, all right?

5 THE COURT: No. But the --

6 MR. SHUSTER: Are you prepared -- we'll do it --

7 THE COURT: Break it down.

8 MR. SHUSTER: -- one step at a time.

9 Q Are you prepared to infer from those documents that the
10 borrower resided in the D.C. area in 2010? Yes or no?

11 A For at least some piece of a year, yes, sir. He
12 generated income in 2010 in Virginia or from a Virginia
13 address.

14 Q Now, let's look to a hardship letter at Page 342. And
15 this hardship letter is dated 2012, correct?

16 A Correct.

17 Q Signed by the borrower?

18 A Yes, sir.

19 Q And he refers there to his 2010 tax return and he says
20 that the business that's referenced in that return was
21 closed in September 2010, correct?

22 A Correct.

23 Q And he says the reason for closing the business was
24 that, "We were planning to move to Arizona." You see that?

25 A I do.

1 Q And yes or no, based on that evidence and the other
2 evidence we've seen, you don't think it's fair to draw an
3 inference that it's more likely than not that the borrower
4 did not use the subject property in Arizona as his primary
5 residence at the time of the loan or during the year
6 thereafter? Yes or no?

7 A Just give me the beginning of the question again,
8 please? Can I draw an inference about where he actually
9 lived?

10 Q Based on that evidence and the other evidence we've
11 seen, you don't think it's fair to draw an inference that
12 it's more likely than not that the borrower did not use the
13 subject property in Arizona as his primary residence prior
14 to the date of his hardship letter?

15 THE COURT: Mr. Cosenza?

16 MR. COSENZA: I have a standing objection. I
17 don't want to constantly interrupt Mr. Shuster. It's -- the
18 questions continue to say based on evidence. I just want to
19 make sure --

20 THE COURT: Based on --

21 MR. COSENZA: -- I want to make --

22 THE COURT: -- based on the document that he's
23 pointing to right now.

24 MR. COSENZA: Yeah. I would just object that it's
25 not evidence in the technical evidentiary sense of -- I

1 think there's, you know, problems with the admissibility and
2 reliability of all of this and I just want to make sure
3 that's preserved. I don't want to interrupt his question
4 every time.

5 THE COURT: Okay. You're -- I hear you. You can
6 answer the question, Mr. Grice.

7 MR. GRICE: Would you repeat it again, please,
8 sir?

9 Q Yes. Based on the evidence we've seen, hardship letter
10 and the other evidence we've seen, Mr. Grice, you don't
11 think it's fair to draw an inference that it's more likely
12 than not that the borrower did not use the subject property
13 in his -- in Arizona as his primary residence prior to the
14 date, say, of this hardship letter? Yes or no?

15 A The answer has to be no. I can't draw --

16 Q You can't draw that inference?

17 A I can't draw any conclusions based on this evidence.

18 Q And your conclusion -- your conclusions on this loan --
19 oh, sorry. I skipped some evidence there. Mr. Grice, let
20 me also direct your attention to -- I'm sorry. Just give me
21 a moment. Page 341 at the same tab.

22 A 3-4-1?

23 Q Yes. It's the page opposite the hardship letter. Are
24 you --

25 A Okay.

1 Q -- are you prepared to draw an inference from this
2 letter, yes or no, that the borrower was using the property
3 in Arizona as a rental property?

4 A In 2012, yes, sir.

5 Q Yes.

6 A Yes. I will infer he was renting it as he says in the
7 letter in 2012.

8 Q Let's look at Page 498, Mr. Grice.

9 A I'm sorry. Page 498. Let me just take a minute and
10 read this. It's a multi-page document, I presume.

11 Q I'm just looking at the information on 498.

12 A But that's part of a much larger document, I believe,
13 part of a 10-page -- no, it's part of a much larger -- an
14 18-page document.

15 Q You with me, Mr. Grice?

16 A I'm almost finished. Another moment. We're talking
17 about this exemption detail that appears on 498? Is that
18 what you're --

19 Q I'm -- yeah, I'm referring to the information that
20 suggests that a foster child was placed with the borrower by
21 a Maryland agency in 2010. Do you see that?

22 THE COURT: I think you misspoke. Was placed in
23 2008.

24 MR. SHUSTER: Sorry. Thank you, Your Honor. My
25 apologies.

1 MR. GRICE: I see that. So -- and you're --

2 Q Yes or no, this piece of evidence combined with the
3 other evidence we've seen doesn't enable you to draw an
4 inference that the borrower lived in Washington D.C. all the
5 way through to 2012 or some time in that time period and
6 never occupied the subject property in Arizona as his
7 primary residence in that time period? Yes or no?

8 MR. COSENZA: I object. It's compound, vague.
9 There are three different questions in that question.

10 THE COURT: The question is -- that Mr. Shuster is
11 asking Mr. Grice is whether, based on the evidence that he
12 has shown you today, whether you can draw an inference that
13 at no time from the origination of the loan through the
14 dates of these documents did the borrower occupy the subject
15 property in Arizona as his primary residence.

16 MR. GRICE: Thank you, Your Honor. No, I can't
17 draw that -- you're asking me for a conclusion. I can't
18 draw that conclusion.

19 Q Okay. Now, you -- Mr. Grice, let's go back to --

20 THE COURT: Mr. Shuster, now, I don't know if
21 you're moving on. We're getting to the point where we have
22 to have a break.

23 MR. SHUSTER: Yes.

24 THE COURT: All right?

25 MR. SHUSTER: I just will -- one or two more on

1 this loan?

2 THE COURT: Perfect. Thank you.

3 MR. SHUSTER: Thank you, Your Honor.

4 Q Mr. Grice, let me direct your attention back to your
5 breach narrative.

6 A Okay. Yes, sir?

7 Q You say in line 2 of your narrative, the Accurint
8 report also indicated that the borrower remained at his
9 employer, JJC Georgetown, until July 2012. You see that?

10 A Yes, sir.

11 Q Your words that you wrote or somebody working under
12 your direction and supervision, correct?

13 A Yes, sir.

14 Q Okay. You -- and that's the Accurint report, you
15 remember, that we looked at a few moments ago with the
16 rectangular box around the information that associated the
17 borrower with JCC Georgetown from September '04 until a date
18 in 2012. Do you remember that?

19 A Yes, sir. I agree that there was an association until
20 2012.

21 Q Good. And then you go on to say in your narrative, "It
22 does not indicate if this was continuous employment or if
23 the employer also had an Arizona location." You see that?

24 A I do.

25 Q So, you're questioning whether JCC -- you understand

1 that Georgetown is in Washington D.C.?

2 A I've lived there. Yes, sir.

3 Q Okay. So, you're suggesting that maybe JCC Georgetown

4 --

5 THE COURT: Mr. Shuster, I'm going to correct you.

6 It's not JCC. They're -- we're not talking about the Jewish

7 Community Center, okay? It is --

8 MR. SHUSTER: I'm sure they have one, though.

9 THE COURT: The undoubtedly do, but Mr. Grice has
10 gotten it right. It's JJC --

11 MR. SHUSTER: JJC Georgetown. Thank you, Your
12 Honor.

13 Q You're questioning whether it's possible, as part of
14 your breach narrative that forms the basis for your opinion
15 that the Trustee's breach review is unreliable. You're
16 suggesting that we don't know -- that it's somehow relevant
17 and possible that JJC Georgetown has an Arizona location,
18 right?

19 A I say that as one --

20 Q Okay.

21 A -- possible consideration. Yes, sir.

22 Q Yes, you do. Do you have any basis whatsoever to
23 believe that JJC Georgetown does have an Arizona location?

24 A Sitting here, no.

25 Q Did you ever look that up?

1 THE COURT: Hold on. Mr. Cosenza.

2 MR. COSENZA: We've gotten to the point of
3 argumentative and --

4 THE COURT: I'm going to allow it. Mr. Shuster's
5 just asking follow-up questions. Go ahead.

6 Q Did you -- since you posited the question, did your
7 team make any attempt to ascertain whether JJC Georgetown
8 has a location in Maricopa, Arizona?

9 A No, sir, nor do I see an affidavit that they don't have
10 one.

11 Q Thank you. No, but that's not the question.

12 THE COURT: Okay.

13 Q What else you didn't see is not the question. My
14 question was given the fact that you raised the point
15 whether your team troubled itself to follow up on that
16 point. Is the answer no?

17 A I don't have evidence that demonstrates a JJC business
18 location in Maricopa.

19 MR. SHUSTER: All right. Good time for a break if
20 --

21 THE COURT: Okay. Great. All right. So, 15
22 minutes? Is that all right?

23 MR. COSENZA: That would be great, Your Honor.

24 THE COURT: Okay. So, let's come back at 20
25 minutes before the hour.

1 MR. SHUSTER: Thank you.

2 THE COURT: Thank you.

3 (Recess)

4 THE COURT: Mr. Shuster?

5 MR. SHUSTER: I have no further questions for Mr.
6 Grice.

7 THE COURT: Okay. Thank you.

8 MR. COSENZA: Your Honor, could we have a few
9 minutes to get our documents together then?

10 THE COURT: Yes, of course. Can I not leave? I'm
11 going to not leave.

12 MR. COSENZA: Okay.

13 THE COURT: How -- well, quantify a few. If you
14 really mean ten then --

15 MR. DAVIS: Yeah. I think it would be better if
16 we took the lunch break and -- would that be all right if --
17 and then came back?

18 THE COURT: That's as they say a horse of a
19 different color. Okay. We can take the lunch break now. I
20 have a conference call I have to be on at 2:00. If we're
21 not done by 2:00, I can be on the call for about 15 minutes
22 and then we can come back in and resume. So, I don't know
23 how much you have.

24 MR. COSENZA: It will be short, yes.

25 MR. DAVIS: We'll be done before 2.

1 THE COURT: You'll be done by then. Okay. So,
2 how much time would you like then?

3 MR. DAVIS: 20 minutes?

4 MR. COSENZA: Half an hour?

5 THE COURT: Okay. Half an hour or at the latest
6 we'll resume at 12:30?

7 MR. COSENZA: Yes. That would be great, Your
8 Honor. Thank you.

9 THE COURT: All right? Okay. Very good.

10 MR. SCHUSTER: Thank you, Your Honor.

11 (Recess)

12 THE COURT: Yeah, so on the scheduling issue, it's
13 been brought to my attention that you folks would like to be
14 here on the 18th? Maybe like is too strong a word. Need to
15 be here on the 18th. It's fine with us. We had a
16 confirmation hearing scheduled for that morning but we'll
17 move it.

18 MR. DAVIS: Thank you, Your Honor.

19 THE COURT: All right? So, as we go through next
20 week maybe we'll be able to size the amount of time that you
21 think you might need on the 18th so we can be more efficient
22 about it. Okay. All right, Mr. Davis. I'm ready when you
23 are.

24 REDIRECT EXAMINATION OF CHARLES GRICE

25 BY MR. DAVIS:

1 Q Mr. Grice, can I -- may I ask you to take out the
2 binder that is the Grice expert reports binder and that has
3 your expert reports in it?

4 A Yes, sir.

5 Q (Indiscernible) Trustees. Would you tell me please
6 what the first document in this binder is?

7 A The first tab is my affirmative report from June 1 of
8 this year.

9 Q Okay. And may I ask you to turn to Tab C?

10 A This is the documents relied upon for that same
11 affirmative report.

12 Q And is this a list of the documents you relied upon in
13 forming your opinions in this case?

14 A Yes, sir.

15 Q Do you see there is a category that begins on the first
16 page of that document that is labeled underwriting
17 guidelines and product profiles?

18 A Yes, sir.

19 Q It continues on for about another page and a half. Do
20 you see that?

21 A I do.

22 Q And are these documents on which you relied in forming
23 your opinions?

24 A They are. Yes, sir.

25 Q And do these include the underwriting guidelines for

1 the loans at issue in the case?

2 A Correct.

3 Q I'm going to ask you to turn to or pull out TRDX-30,
4 which is a spreadsheet concerning one of the loans Mr.
5 Shuster asked you about.

6 A The 8455?

7 Q 8455, correct. Do you have that?

8 A I do. Yes, sir.

9 Q Remember, this was a loan involving a Las Vegas
10 property?

11 A Yes, sir.

12 Q And do you remember Mr. Shuster asked you a series of
13 questions in the beginning of your examination that related
14 to pairing two pieces of information, a MERS report and an
15 audit credit report? Do you recall that?

16 A I do.

17 Q If you direct your attention to claimant's factual
18 basis, did the Trustee cite the audit credit report in their
19 factual basis for this claim?

20 A No, sir.

21 Q Could you turn to TRDX-43, which is the spreadsheet for
22 the loan ending in 7599?

23 THE COURT: I'm sorry. Where can I find that, Mr.
24 Davis?

25 MR. DAVIS: It's in a pull-out, I think,

1 spreadsheet --

2 THE COURT: Right, but attached to which loan is
3 it?

4 MR. DAVIS: 7599. I think it was delivered
5 separately by Mr. Shuster.

6 MR. GRICE: Joe, I have an extra one if you want
7 to give it.

8 THE COURT: I have it. Thank you.

9 MR. DAVIS: You have it? Okay.

10 Q Mr. Grice, do you recall that in connection with this
11 loan Mr. Shuster showed you some tax documents?

12 A Yes, sir.

13 Q Do you recall that he showed you a hardship letter?

14 A I do.

15 Q That he showed you some documents related to rental
16 lease matters?

17 A Yes, sir.

18 Q And some other tax-related documents?

19 A I do.

20 Q Would you direct your attention to claimant's factual
21 basis and let me know whether any of those documents were
22 cited by the Trustee when they brought this claim?

23 A Yeah, the only references in the factual basis are to
24 the Accurint search, the hardship letter, and the audit
25 credit report.

1 Q Thank you. Now, I have another document to show you in
2 connection with this loan.

3 MR. DAVIS: Your Honor, may we approach and
4 distribute it?

5 THE COURT: Yes. Thank you.

6 MR. GRICE: Thank you.

7 Q Now, Mr. Grice, you recall this is a misrepresentation
8 of occupancy claim?

9 A Yes, sir. This is the JJC --

10 Q I guess I would prefer not to say the name of --

11 A Oh, I'm sorry.

12 Q That's all right.

13 A Forgive me. My mistake.

14 Q That's all right.

15 A Yes, sir.

16 Q But, it's about a borrower who was purchasing a
17 property in Arizona. Do you recall that?

18 A Yes, sir.

19 Q And I put in front of you a document from the loan file
20 for this particular borrower. Did the Trustee show you this
21 document?

22 A They did not.

23 Q Is this document in the Trustee's claim file?

24 A No, sir.

25 Q Okay, Mr. Grice. I want to take you back to a document

1 -- a loan that was discussed yesterday and I'm going to ask
2 you to take out our binders for this loan, so it's the one
3 that you had in the direct.

4 THE COURT: He probably -- Mr. Grice probably
5 doesn't begin to know where to find those.

6 MR. DAVIS: That's a good question.

7 MR. GRICE: Those went away.

8 MR. DAVIS: We'll hand you some new ones.

9 MR. GRICE: Thank you.

10 THE COURT: Which of the binders, Mr. Davis; do
11 you know?

12 MR. DAVIS: Well, we're going to start in Tab 4.

13 THE COURT: Is that Binder 1?

14 MR. DAVIS: That would be Binder 1, yes.

15 THE COURT: Thank you.

16 MR. DAVIS: Unfortunately, I have a mega set of
17 the combined.

18 THE COURT: Yeah. So, they look like this. You
19 have it?

20 MR. GRICE: I do.

21 THE COURT: Okay.

22 MR. GRICE: It was just provided by counsel.

23 THE COURT: Okay.

24 Q Mr. Grice, do you recall yesterday speaking with Mr.
25 Shuster about the loan ending in 3811?

1 A I do.

2 Q Okay. May I ask you to turn to Page 17 of 73 --

3 A Yes, sir.

4 Q -- in Tab 4, which is PA Exhibit 626? Do you have that
5 in front of you?

6 A I do. Yes, sir.

7 Q Did Mr. Shuster discuss this with you yesterday?

8 A Yes. We went through this.

9 Q Okay. Would you take a look at the bottom two-thirds
10 of the document? What is it that's noted there about the
11 borrower's credit score?

12 A So, this is in the underwriter comments section of the
13 underwriter -- I'm sorry, the uniform underwriting and
14 transmittal summary. And it provides, as is common, the
15 three credit scores for this borrower. The low score is
16 682, which is about -- I think the high end of the range of
17 the national average, then 700 and 718.

18 Q Okay. Did Mr. Shuster discuss these credit scores with
19 you yesterday?

20 A No. We didn't have a chance to discuss it.

21 Q Okay. What does the borrower's credit score tell you
22 here?

23 A It's very strong.

24 Q Okay. Can I ask you to turn back a few pages? We're
25 going to look at that bankruptcy filing that you saw

1 yesterday, statement of financial affairs --

2 A Yes, sir.

3 Q -- which begins on Page 40 of 73. Do you see that?

4 A I do.

5 Q Do you recall discussing this document with Mr.
6 Shuster?

7 A Yes, sir.

8 Q Do you recall discussing on Page 41 of 43 the child
9 support information that's indicated there?

10 A Yes, sir.

11 Q Does this document tell us when in the period of 2000
12 to 2007 that child support came in the door?

13 A No. It just provides a range.

14 Q Did the Trustees reference the child support payments
15 in their claims submission?

16 A They did not.

17 Q Please turn to Page 45 of 73, if you would?

18 A Yes, sir.

19 Q You see at the -- in the top half of the page what is
20 referenced there?

21 A I do.

22 Q And what is it?

23 A The -- in this case the applicant for the bankruptcy,
24 the petitioner, or our borrower, is describing that she
25 operated a child care business between 2005 and 2006.

1 Q Did the Trustees reference this business as a source of
2 income potentially in their claims submission?

3 A No, sir.

4 Q Did Mr. Aronoff reference this fact in his discussion
5 of this loan?

6 A I believe no.

7 Q Mr. Grice, I'm going to ask you to take a look at
8 another document we have in redacted form.

9 A Did you say redacted or --

10 Q Redacted. We're going to hand you a redacted document.

11 A Thank you.

12 Q Mr. Grice, what is this -- this is, by the way, PA
13 Exhibit 3811-K. Mr. Grice, what is this document?

14 A This is a 1099, you know, a federal tax reporting form
15 prepared by a payer. In this case the Michigan Department
16 of Human Services paid the borrower in this transaction 2000
17 -- and I think it's 35 dollars in miscellaneous income
18 during 2008.

19 Q Is this a document the Trustees reference in their
20 claims submission?

21 A No, sir.

22 Q Mr. Grice, I'd like you to turn to Tab 51 of our
23 binder.

24 A Do you know which number that is?

25 Q It's in Binder 3.

1 A Okay. Thank you.

2 Q It's almost the last thing, I believe.

3 A Yes, sir.

4 Q Do you recognize this document, Mr. Grice?

5 A I do.

6 Q And what is it?

7 A This is the borrower for the loan ending in 31 -- 3811.
8 It's her request for modification and affidavit under the
9 Making Home Affordable Program, so it's a request for a
10 modification dated in 2010.

11 Q Now, Mr. Shuster didn't show you this document
12 yesterday, did he?

13 A I don't believe so. No, sir.

14 Q And is this document referenced in the Trustee's
15 submission? That's at Tab 39, if you'd like to check.

16 A No, sir.

17 Q Mr. Grice, what does this hardship document tell us
18 about this borrower?

19 A You can learn quite a bit. I can't use her name.
20 She's applying for a -- obviously a modification. This is a
21 questionnaire prepared by the Federal HAMP program, I
22 believe. And she fills out -- she's requested to fill out
23 or complete a number of boxes. There's a commentary at the
24 bottom -- well, there are four questions -- four boxes at
25 the bottom of this page. Like in Page 1 of 4 she checks

1 three of them, the first being that "My household income has
2 been reduced," the second "My monthly debt payments are
3 excessive." I'm only reading a few words. The third is,
4 "My expenses have increased." And then she provides
5 "other." This continues onto the next page where she
6 prepares a budget and then on Page 3 of 4 there's a -- quite
7 an extensive acknowledgement and agreement where she attests
8 to the accuracy under penalty of perjury of all the
9 information and documents, that they're truthful, the events
10 identified are accurate, et cetera, and she understands that
11 this -- there are serious consequences for misrepresenting
12 information on this report.

13 Q Mr. Grice, remind us, what was the type of breach claim
14 on this loan?

15 A It was a misrepresentation of income.

16 Q Mr. Grice, do you have an understanding of the current
17 status of this loan?

18 A I do.

19 Q And what is it?

20 A It's performing. She's paying as agreed under the
21 terms of the modification.

22 MR. DAVIS: Thank you. No further questions.

23 THE COURT: Thank you.

24 MR. SHUSTER: Five minutes?

25 THE COURT: Sure.

1 MR. SHUSTER: Please?

2 THE COURT: I'm just going to stay put.

3 MR. SHUSTER: Okay.

4 THE COURT: Okay?

5 MR. SHUSTER: Thank you, Your Honor. I don't
6 think I have anything. Thank you.

7 THE COURT: Okay. Thank you. All right. So, Mr.
8 Grice, thank you very much.

9 MR. GRICE: Thank you.

10 THE COURT: You may step down. So, we have
11 nothing more for today?

12 MR. COSENZA: I believe so, Your Honor.

13 THE COURT: Okay.

14 MR. COSENZA: And Monday we'll start with
15 (indiscernible). We'll stand down in our affirmative case
16 and --

17 THE COURT: Okay. So, you're -- so, just for the
18 record, so the plan administrator has as of now completed
19 its affirmative case?

20 MR. COSENZA: Pending the issue we've raised with
21 Mr. Castro due to his health issue. He'll be --

22 THE COURT: Understood.

23 MR. COSENZA: -- coming in part of our rebuttal
24 case.

25 THE COURT: Okay. All right. So -- and on Monday

1 at 10:00 we will begin with Mr. --

2 MR. SHUSTER: Esses.

3 THE COURT: -- Mr. Esses. Okay. Very good.

4 MR. SHUSTER: Thank you, Your Honor.

5 THE COURT: Okay. Thank you.

6 MR. DAVIS: Thank you.

7 THE COURT: Have a good weekend.

8 MR. DAVIS: Thank you.

9 (Whereupon these proceedings were concluded at
10 12:52 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
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Date: December 8, 2017